

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

EARTH FARE, INC.

Employer

And

Case 10–RC–227018

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 204 A/W UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO/CLC**

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

I have considered the evidence and the arguments the parties presented on the issues.¹ As described below, based on the record and Board law, including the Board's decisions in *PCC Structurals*, 365 NLRB No. 160 (2017), and *United Operations*, 338 NLRB 123 (2002), I have concluded that the petitioned-for unit, limited to the Employer's full-time and part-time employees in the bakery and prepared-foods departments, is not appropriate. Instead, I find that the excluded employees in other departments at the Employer's store share a sufficient community of interest with the petitioned-for employees and must be included in the unit. Having found that the petitioned-for unit is inappropriate, I shall dismiss the petition.²

¹ The Employer filed a brief. The Petitioner did not. In its brief, just as it did at hearing, the Employer argues that the Board's election regulations are invalid. The Board, however, has consistently concluded that it lawfully enacted its election regulations. See, e.g., *RHCG Safety Corp.*, 365 NLRB No. 88, slip op. at 7, fn. 21 (2017). See also *Associated Builders of Texas v. NLRB*, 826 F.3d 215 (5th Cir. 2016).

² The Petitioner advised at hearing that it did not wish to proceed in this matter if a storewide unit is the smallest appropriate unit.

I. INTRODUCTION

The Employer, Earth Fare, Inc., is a North Carolina corporation with a grocery store located at 66 Westgate Parkway in Asheville, North Carolina, where it engages in the retail sale of groceries, meat, and related products.³ Petitioner, United Food and Commercial Workers Union, Local 204 a/w United Food and Commercial Workers International Union AFL-CIO/CLC, filed this petition under Section 9(c) of the National Labor Relations Act.⁴ Petitioner seeks to represent a unit of all full-time and part-time employees in the bakery and prepared-foods departments.⁵ There are approximately 47 employees in petitioned-for unit.⁶ Petitioner argues that the petitioned-for unit is appropriate for bargaining because employees in the petitioned-for departments share a sufficiently distinct community of interest from other employees in the Employer's Westgate store.

The Employer maintains that the unit Petitioner seeks is not appropriate and would constitute a fractured unit because the bakery and prepared-foods departments have no community of interest distinct from the other departments. The Employer argues that a storewide unit is the smallest appropriate unit because its store operations are highly integrated

³ Although the Employer has other stores in and outside of North Carolina, only its Asheville, North Carolina store is at issue in this proceeding.

⁴ The parties stipulated that there is no contractual bar to the petition.

⁵ The petition identifies the unit as all full-time and part-time employees in the “food services departments of the bakery, pizza, deli, salad bar, hot bar, kitchen, and juice bar.” Collectively, those areas are considered part of the store's bakery and prepared-foods departments.

⁶ The parties stipulated on the record that all department managers, including meat and seafood, prepared-foods, specialty, grocery, wellness, product, front end, bakery, dairy, bulk, inventory control officers, and inventory control managers are supervisors as defined in Section 2(11) of the Act and should be excluded from any unit in which the Regional Director may direct an election. The parties also stipulated that all assistant department managers, including the prepared-foods, grocery, and produce assistant managers, are not Section 2(11) supervisors, and should be included in any unit in which the Regional Director may direct an election.

among all departments; employees frequently interchange between and across departments; employees share common supervision across all departments; employee skills, duties, and work significantly overlap with other departments; and all of its employees share common terms and conditions of employment. The Employer asserts that any appropriate unit must include all full-time and part-time employees at its Westgate store, including employees from the bakery, prepared-foods, produce, meat and seafood, grocery, demonstration, front-end, wellness, and administrative departments. There are about 118 employees at the Westgate store in the unit the Employer contends is the smallest appropriate unit.

A hearing officer of the Board held a hearing in this matter, and the parties subsequently filed briefs, which I have duly considered.

To provide context for my discussion of the issue, I provide below a brief overview of the Employer's operations, including a description of the work that employees in each department perform. I will then analyze the facts based on the Board's eight-factor test in *PCC Structural*s, 365 NLRB No. 160 (2017), and *United Operations*, 338 NLRB 123 (2002), explaining why the balance of factors demonstrate that the Petitioner's proposed unit is not appropriate and that a store-wide unit is the smallest appropriate unit.

II. FACTS

A. Store Overview

The Employer's Westgate store is a health-conscious, retail grocery store, which offers its customers a variety of packaged and made-to-order food items and products. The Employer's store has nine departments: grocery, wellness, prepared foods, front-end, produce, specialty, meat and seafood, bakery, and administrative. The record does not specify the type of work

performed in the grocery department, other than that the department encompasses both the dairy and bulk areas. Also, the record does not specify the type of work performed in the wellness department. The prepared-foods department makes ready-to-eat food at several locations within the store, including the hot bar, salad bar, pizza, and juice bar areas. The front-end department operates the checkout cash registers near the store entrance, and includes all cashiers, baggers, and bookkeepers. The produce department handles all fresh fruit and vegetables. The specialty department covers all beer, wine, cheese, halals, pastas, and charcuterie. The bakery department provides customers with baked goods, including bread and cakes. The meat and seafood department handles all fresh meat and seafood items, but not pre-packaged meats. The administrative department covers food demonstrations and price scanning and provides pricing labels for the bakery and prepared-foods departments, the only departments that require these labels.

The Employer largely groups its products by department, physically spread throughout its store. For instance, the store's center contains aisles and a freezer of grocery product. A customer circling the aisles might begin at the front-end cashiers, and continue through the produce, bulk, dairy, meat and seafood, bakery, and deli areas. Then, the customer would encounter the wellness and specialty departments before circling back to the front-end area. The Employer's final department, prepared foods, is about 8 feet away from the wellness and specialty departments and about 15 to 30 feet away from the front-end area. As to most departments adjacent to one another, employees are sufficiently proximate to co-workers in the neighboring department for conversation, although the record does specify the exact distances. As will be discussed later, there was little evidence that employees regularly converse with co-

workers in neighboring departments, despite their proximity. There is also a dining area adjacent to the prepared-foods area where customers may consume food they have purchased on site.

Generally, department employees only utilize equipment located in their area. For example, the prepared-foods pizza area uses its own pizza oven while the bakery department has separate ovens. There are three exceptions; there is some evidence that other department employees might use the prepared-foods dishwashing area to clean their items. For example, two specialty department employees have used the dishwashing area to clean their tools. The bakery, prepared-foods, and meat and seafood departments share a common freezer. The freezer is located beside the meat and seafood department, adjacent to the bakery. Each department has a separate rack for its product within the freezer. There is also a storage area used by the bakery and prepared-foods departments, near the bakery department. No other departments use the storage area. Aside from these exceptions, only department employees make use of each department's equipment.

B. Job Classifications and Duties

The Employer's supervisory structure at the Westgate store includes salaried managers. Salaried managers include the store manager and assistant store managers. Collectively, the salaried managers allocate work hours to each department from the overall store budget; approve all employee discipline, schedules, and payroll; and ultimately supervise the department managers. Department managers work almost exclusively in their department and with their employees. Department managers create schedules specific to their department, approve time off, do inventory, provide employees with lunch breaks, and generally monitor their department. A department manager will also assign and direct work for the department during the hours when

the manager is on site. A department manager may serve as the “manager on duty.” When no salaried managers are on site, the manager on duty supervises the whole store, across all departments. A department manager typically serves as designated manager on duty, in the early morning hours and late evening hours. When a department has no department manager on site, a non-supervisory assistant department manager may assign employees work or employees may self-direct the work based on their experience.

Each employee works in a specific department under a department manager and has a defined job title and pay code. Most employees in the food-related departments, such as those in the produce, bakery, or meat and seafood departments, work as clerks.⁷ Typically, department clerks’ titles are associated with the department, such as bakery clerk or produce clerk. The prepared-foods clerks are unique, in that each clerk is classified under a subcategory within the prepared-foods department based on the job the employee performs: hot bar, cold bar, juice bar, and pizza. Regardless of department, a clerk’s job duties would include, for example, pulling product, dating and displaying the product in the clerk’s department, and providing product directly to customers in that department. A prepared-foods juice-bar clerk is responsible, among other things, for interacting with customers in the juice-bar area, creating made-to-order smoothies, and operating the juice-bar cash register. A meat and seafood clerk is responsible for placing sliced package meats in the display or freezer as needed and serving customers in the meat department.

⁷ Clerks are the most prevalent job classification at the Westgate store, making up 70 of the approximate 118 employees. The next most prevalent job classification is cashier, at about 25 employees. Dishwashers and bookkeepers are the least prevalent job classifications, at about 5 and 3 employees respectively.

Aside from clerks, there are four other employee designations in the food-related departments that have different job duties than their clerk counterparts. In the bakery department, the baker and bread baker are responsible for making bread products. The record does not specify whether a baker and bread baker's job duties differ. However, a bread baker's duties include weighing out recipes, following the recipe, baking the bread, and knowing what color it should turn out to be. The meatcutter will break down partially processed primal cuts of meat and package them for items, such as ground beef. Meatcutters at this store are not responsible for breaking down full animal carcasses. The dishwasher washes dishware in the prepared-foods department. The dishwasher is not responsible for directly handling food. Assistant department managers are considered by both parties as non-supervisory employees, but the record does not specify their day-to-day job duties.

Employees working the front-end and administrative departments have different job titles and pay codes than their food-related department counterparts. The front-end department has baggers, cashiers, and bookkeepers. The record does not specify a bagger's day-to-day job duties beyond the obvious suggested by the bagger's job title. Cashiers operate the primary cash registers at the entrance to the store. Bookkeepers are responsible for handling administrative functions on the front end, including cash-loan pickups,⁸ and balancing funds at the end of a shift. The administrative department has demonstration clerks and scan coordinators. A demonstration clerk is responsible for food demonstrations on the store floor and their work locations within the store vary from day to day. The demonstration clerk may work in close proximity with employees from other departments, including employees from other departments

⁸ The record does not state whether bookkeeper's cash loan duties are between the Employer and customers, or if they relate only to the Employer's operations.

who prepare food for the employee’s demonstration. A scan coordinator is responsible for scanning all product pricing and creating signs for the store.

C. Interchange and Contact Between Departments

There is no record evidence that the Employer holds employee meetings that involve employees from different departments. Employees perform most of their work within their designated department and execute duties relevant to that area. However, there are five occasions in which an employee in one department would venture out to another department: a permanent transfer, a temporary transfer, when cross-training, to refresh a “cross-merchandise” product, or to “push/pull” product.

The record shows 10 permanent transfers between 2016 and 2018, eight of which took place in 2018. Five of the permanent transfers were employees who started in a petitioned-for department and ended up in an excluded department, or vice-versa. For example, employee E. Allison transferred from the specialty department to the prepared-foods department, and J. Turney transferred between the prepared-foods, administrative, and produce departments.

Capturing objective evidence of employees working in other departments is difficult when the employee does so for only a few hours or for less than a single shift. Payroll records do not typically capture transfers lasting less than a full shift. There is, nevertheless, some evidence of temporary transfers. Only about 25 percent of the employees who operated the juice-bar cash register thus far in 2018 were prepared-food employees. The other employees who served as juice-bar cashiers are employees from other departments. The record does not show where these employees came from other than Bookkeeper A. Graysty, who, according to Store Manager Robert Cantrell, “frequently” works on the prepared-foods juice-bar cash register.

In contrast, payroll records typically do track temporary transfers of a full shift or more. According to payroll records, six employees during the period from January to September 2018, performed work in more than one department within the same store, including two prepared-food clerks who worked in produce, one of whom worked in that department as an assistant manager.⁹ The record does not show what type of work each individual performed during the employee's temporary transfer or how many shifts the employee worked in another department over the course of the year. One such transfer, a prepared-foods employee who temporarily worked in the meat and seafood department, stated that she "mostly pulled out wads of meat and had to be trained on the spot." According to Store Manager Cantrell, cashiers run the cash register in the prepared-foods department on a daily basis, while prepared-food clerks familiar with the cash register also work the front end. During the hearing, an employee testified that two prepared-foods employees help out in the bakery and at least one cashier from another department regularly works the juice bar. Record evidence suggests that employees temporarily transfer between departments, regardless of whether the employee is in the petitioned-for departments or excluded departments.

An employee from one department may cross-train in another department. The record does not specify how employees are cross-trained or when the employees received cross-training. Nevertheless, there is evidence that a cashier from another department who is cross-trained to operate the cash register at the juice bar may work either in the juice bar or in the employee's regularly-assigned department. All front-end cashiers can operate cash registers in

⁹ Employer exhibit 24 lists 11 employees who performed work in two or more different departments. However, even though the Employer paid five employees under two account codes, the five employees performed their temporary transfer work at different stores according to Store Manager Robert Cantrell's testimony regarding account codes.

the juice bar, two bakery clerks have been trained as cashiers, 10 specialty clerks can work in the deli and juice bar, and one produce employee can work in the meat and seafood department.

There is additional evidence of employee contact between departments. Employees from several departments may be involved in creating and maintaining a “cross merchandise” display. In cross merchandising, the Employer takes items from several departments and puts them in a single location in order to suggest a dish idea to consumers. For example, an employee creating a cross-merchandise display may take angel food cake from the bakery, strawberries from the produce department, and whipped cream from the grocery department to create a strawberry shortcake display. Employees from each department are then responsible for “refreshing” the cross-merchandise display at least once per day, making sure that there is adequate stock of the food items in the display from that employee’s department. The record is not clear on how often employees from different departments interact when cross-merchandising. However, Baker C. Roche testified that during her daily cross merchandising activities, she puts baguettes in the basket and “might say hello to people.”

Departments can “push” or “pull” product to and from other departments based on store needs. Product may be pushed to another department when the home department is having a difficult time selling the product or if a product is near expiration. The home department would give that product to another department to make use of the product. A department may instead, pull product from another department if it needs the item to perform its departmental duties. For example, if prepared-foods employees are making meatballs that day and run out of ground beef, they can pull that product from the meat and seafood department. Similarly, bakery-department employees may provide the prepared-foods department salad bar with desserts or croutons,

though employee Roche testified that the practice occurs less often than in the past. Pushing and pulling product occurs daily and across all departments. Typically, a salaried manager or departmental manager approves and physically moves the product between departments. However, a department manager acting as the manager on duty for the whole store may be the most senior person on duty and approve the push or pull.

Employees from other departments do have contact and interaction when a demonstration clerk puts on a demonstration. The demonstration clerk puts on these demonstrations in departments throughout the store. The Employer asks employees in the departments where the demonstration is taking place to prepare the demonstration food and at times, to work alongside the demonstration clerk

D. Terms and Conditions of Employment

As a general rule, the Employer does not require employees to have prior training or experience in their respective departments. The Employer does not precondition hire of any department clerk, baker, bread baker, cashier, or other entry level position based on prior experience. The only potential experience requirement applies to meatcutters and the record is not clear regarding whether experience is absolutely a prerequisite to hire. Store Manager Cantrell testified that, “obviously when you get to be a meatcutter, it’s important that you’ve probably cut meat at some point to be able to start right off as a meatcutter,” but stopped short of calling prior meat-cutting work experience a requirement.

The Employer provides training, post-hire, regarding handling open fresh foods. Employees receive a certification after completing the training and then they can handle open fresh food. Employees who receive this training include bakery employees, meat and seafood

employees, and the demonstration clerk from the administrative department. None of the other jobs in the store require specialized certifications or skills. Front-end cashiers and stock clerks, for example, do not have to be certified but they also receive post-hire training in the duties of their position. They, as do other employees in the store, undergo a short period of on-the-job training when they begin working for the Employer or transfer to a new position. The length of that training depends on the employee's job. For example, it would take a bakery-department employee three weeks or less to learn to ice cakes and operate baking equipment, including mixers, dough-forming machines, and the oven. Employees making sandwiches, pizzas, or running the deli in a prepared-foods department area can learn their day-to-day responsibilities in less than a couple of hours. Pizza dough, for example, comes prepackaged. In the meat and seafood department, an employee can learn to use the saw, cuber, or grinders in a matter of hours.

All non-supervisory employees earn roughly the same wages and benefits. To determine pay rates, the Employer maps all employee job titles onto a pay grid, from which it determines each employee's pay band. The pay band represents a wage range available for the Employer to pay that employee. For example, except for prepared-foods clerks in the pizza and hot-bar area, all department clerks are in the same pay band as cashiers, dishwashers, and baggers. Prepared-foods clerks in the pizza and hot-bar areas are in the same pay band as the bakers. Bread bakers are in the same pay band with bookkeepers, scan coordinators, meatcutters, and certain department managers. The Employer's wage structure does not vary along departmental lines.

The record does not specify the wage rates an employee may earn in a particular band or how those wage rates compare to other pay bands. The only specific wage-rate evidence in the

record is from employee C. Roche. Roche earned \$10 per hour upon hire as a prepared-foods pizza clerk, and now earns \$12 per hour as a baker. Both job titles are within the same pay band.

All eligible full-time employees receive the same health-insurance and other benefits. Thus, all full-time prepared-foods clerks are eligible for the same benefits as full-time meatcutters, cashiers, and other full-time employees. Part-time employees who work less than 30 hours per week are not eligible for benefits, regardless of department. About 60 percent of employees are full-time and 40 percent are part-time. The ratio between full-time and part-time employees varies slightly between departments. Thus, the front-end department is skewed towards part-time employees, the wellness department is skewed more towards full-time employees, and the other departments trend pretty close to the 60/40 full-time/part-time ratio. The Employer outlines these benefits and other policies in its Team Member Handbook, which it applies to all of its employees storewide.

Employees in all departments also share in two other benefit programs: the legacy benefit and boot list. The legacy benefit allows employees to gift sick leave to other employees in the store. The record does not show how often employees use this benefit. However, there is evidence that employees have used the legacy benefit on at least two occasions since 2017. In one instance from 2018, Front-end Manager Tucker Drake gifted prepared-foods employee J. Reinholz with sick leave.

The boot list program, which is available to all employees in all departments, provides that any employee may earn a \$50 gift card if the employee identifies a product in the store that contains one of the prohibited substances on the Employer's boot list. For instance, if an employee identifies a product that has synthetic growth hormones or high fructose corn syrup,

the employee notifies his or her supervisor. The Employer will then pull the product and award the reporting employee a \$50 gift card. Employees may identify items under the boot list program in any department. The record does indicate whether any employees at the Westgate store have used the boot list program.

Other conditions of employment vary slightly between departments. The Employer does not have a strict uniform policy. The Employer makes aprons and chef coats available to all employees, but most employees wear only a name badge and an apron. The Employer requires employees working in departments that directly handle food — prepared-foods, meat and seafood, bakery, and specialty foods — to wear gloves and a hair net. Employees who do not regularly handle food — the front-end department, for example — do not have to wear gloves or a hair net while working in their department.

Employee shifts vary between departments. Most departments open along with the store at 7:00 a.m. However, the prepared-foods salad bar and pizza area employees may start later in the morning, since their product is not available for purchase until 10:00 or 11:00 a.m. Bakery employees arrive at 5:00 a.m. to prepare for the day. Most departments close at 8:00 p.m. The bakery, meat, and seafood departments close at 9:00 p.m., and the deli department, at 11:00 p.m.

All employees clock in to work using time cards in the store manager's office. The Employer arranges its time cards in three slots: "food service," "meat," and an unlabeled slot for all other time cards.

III. ANALYSIS

A. Relevant Board Law

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board determines whether the unit a petitioner proposed is appropriate because employees in the petitioned-for unit are readily identifiable and share a sufficiently distinct community of interest. *PCC Structural, Inc.*, 365 NLRB No. 160 (2017); *United Operations*, 338 NLRB 123 (2002). Under this traditional community-of-interest approach, the Board considers the interests of both the petitioned-for employees and those employees who would be excluded from the petitioned-for unit to conduct its analysis. The Board will not approve fractured units; that is, combinations of employees that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999).

In conducting this analysis the Board uses a multi-factor test that assesses whether the petitioned-for employees are organized by the employer in a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; have frequent contact with other employees; have distinct terms and conditions of employment; are separately supervised; are functionally integrated with the employer's other employees; and interchange with other employees. *United Operations*, 338 NLRB at 123; *PCC Structural*, 360 NLRB No. 160, slip op. at 11. Particularly important to this determination are the utilization of specialized skills and training such that one or more departments may be separated from other departments within the context of a grocery store. See *Scolari's Warehouse Markets*, 319 NLRB 153, 156-57 (1995);

See also *C & K Market*, 319 NLRB 724, 725 (1999). All relevant factors must be weighed in determining community of interest. Although a plant-wide unit is presumed appropriate, *Airco*, 273 NLRB 348, 349 (1984), there is no requirement of a plant-wide unit and the Board generally attempts to select the smallest appropriate unit encompassing petitioned-for employees. *Bartlett Collins Co.*, 334 NLRB 484 (2001), citing *R&D Trucking*, 327 NLRB 531 (1999) and *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967).

B. Application of Law

The balance of the factors demonstrates that employees in the petitioned-for employees, those in the bakery and prepared-foods departments, do not share a sufficiently distinct community of interest from other employees at the Employer's store. As I explain more fully below, I find, based on their skills and training, job functions and work, their terms and conditions of employment, and their functional integration and interchange, that the petitioned-for employees do not share a unique community of interest to the exclusion of employees employed at the store in other departments. Instead, I find that these factors establish that a storewide unit is the smallest appropriate unit that includes the petitioned-for employees.

1. Separate Department

The Employer does not treat the petitioned-for unit employees, those employees in the bakery and prepared-foods departments, as a separate and distinct department. Instead, the bakery and prepared-foods employees are designated separately, in the same fashion as other employees. The Employer designates all employees into one of nine departments, including the petitioned-for employees of the bakery and prepared-food departments. However, there is no evidence that the Employer treats the bakery and prepared-foods departments collectively,

disconnected from all other departments. To the contrary; the Employer draws a clear line between the bakery and prepared-foods departments, just as it does for the other seven departments. For example, all departments, including the bakery and prepared-foods, have their own designated areas in the store, work schedules, and department managers. The Employer's pay grid contains separate job codes for departmental clerks, including both bakery clerk and prepared-foods clerk designations. Thus, the bakery and prepared-foods employees are not part of the same department. In light of the above, and the record as a whole, I find that this factor does not favor the petitioned-for unit.

2. Skills and Training

Employees, including those in the bakery and prepared-foods departments, do not utilize specialized skills or training to perform their daily jobs. Across all departments, the Employer does not require most employees to have prior experience, familiarity with unique equipment, or other specialized knowledge. The Employer also does not have an apprenticeship or other formal training program. Rather, all employees can perform their day-to-day jobs after a short period of on-the-job training. For instance, a bakery clerk can be trained to perform duties such as dating and displaying product in the bakery department, interacting with customers, and pulling product for the customer in as little as one shift. Similarly, a meat and seafood or prepared-foods clerk can learn their positions in a matter of hours. Even the Employer's meatcutters, who do not break down entire animal carcasses, do not utilize the traditional meat-cutting skills that would categorize them as craftspeople. Instead, meatcutters take partially processed primal cuts and break them down for packaging in the store. The petitioned-for unit employees lack any skills that significantly distinguish them from the excluded employees.

Even the training that the Employer requires for bakery and prepared-foods employees likens them to other department employees. The Employer provides all bakery and prepared-foods employees with food-handler training, since these employees handle open fresh foods. However, the training is not unique to bakery and prepared-foods employees. Because they also handle fresh foods, the Employer also requires meat and seafood department employees and the demonstration clerk in the administrative department take this training. Aside from food-handler training, the Employer does not require employees to take any additional training. Accordingly, the evidence establishes that the petitioned-for unit employees' skills and training are indistinguishable from those of excluded employees in other departments. I find that this factor favors a storewide unit being the smallest appropriate unit.

3. Job Functions and Work

Bakery and prepared-foods department employees do not share substantially similar job functions. Bakery employees spend most of their work day in the bakery department, handling baked goods. Prepared-foods employees work almost exclusively in their designated area within the prepared-foods department, creating ready-to-eat foods on the hot bar, salad bar, pizza area, or juice bar. These employee job duties are not connected. These departments also use different equipment. A bakery employee may work with a dough forming machine, whereas the pizza dough used in the prepared-foods arrives prepackaged. The bakery employees use mixers and ovens. Prepared-foods juice-bar employees use a smoothie machine and a cash register. Again, there is no overlap between the petitioned-for bakery and prepared-foods employee job functions.

In contrast, several job functions that bakery and prepared-foods employees share are not significantly different than the job functions of other employees employed in other departments in the store. Bakery and prepared-foods employees interact and serve customers in their departments in the same way cashiers, meat and seafood clerks, and the demonstration clerk do so in their departments. Similarly, prepared-foods juice-bar clerks check customers out via the juice-bar cash register, work that is similar to a cashier's job function in the front-end department. In addition, the Employer involves many departments in its cross-merchandising program, including the bakery, produce, grocery, and meat and seafood departments. All involved departments are responsible for the same function; to check and refresh product in the cross-merchandise display. Only bookkeepers in the front-end department have largely different job responsibilities than other employees, since bookkeepers are responsible for storewide budget, providing cash loans, and other administrative functions. However, there are only three bookkeepers out of 118 employees storewide. The vast majority of employees perform similar job functions.

I find that this factor weights against the petitioned-for unit being appropriate.

4. Terms and Conditions of Employment

The store employees' wage structure, benefits, and other work conditions are virtually identical across departments. The Employer uses a pay grid that organizes employees based on job classification rather than department. Bakery clerks and prepared-foods clerks in the juice and cold bar areas share the same pay band as cashiers and clerks in all other departments. While bakers and prepared-foods clerks in the hot bar and pizza areas are grouped together, the bread baker shares a pay band with the meatcutter, scan coordinator from the administrative

department, and the bookkeepers in the front end. Since the Employer may group positions within a department in different pay bands, the record is clear that the Employer does not determine wage rate solely along departmental lines.

Meanwhile, employees share nearly identical benefits and other work conditions. All employees are subject to the same Team Member Handbook, have the opportunity to become full-time employees, and can opt into the same health insurance and benefit plans for which they qualify. All employees can equally benefit from the legacy and boot list programs. The Employer does not have a strict uniform policy, yet it makes aprons, coats, and chef hats available to all employees. The only employees for whom the Employer dictates attire are those who handle open, fresh food. They must wear hair nets and gloves, but this requirement is not dictated along departmental lines. Thus, while bakery and prepared-foods employees must wear hair nets and gloves, so do specialty and meat and seafood employees. Employee start and end times do not vary significantly between departments. All employees, both petitioned-for and excluded, share a common wage structure, benefits package, and other terms and conditions of employment.

I find that this factor does not support the petitioned-for unit being appropriate.

5. Supervision

Bakery and prepared-foods employees have supervision distinct from one another, while sharing common supervision with all other departments under particular circumstances. An employee's direct supervisor is typically his or her department manager. Department managers generally have significant control and direction over the work performed in their department and may not exercise control over another department. For instance, a bakery department manager

does not direct work in the prepared-foods department, or vice versa. The only time a department manager may transcend that role is when the Employer designates the manager as the manager on duty. The manager on duty supervises the whole store, not just the manager's home department. Regardless of the situation, bakery and prepared-foods employees do not share a unique, distinct community of interest on the basis of their supervision.

I find that this factor neither favors nor weighs against the petitioned-for unit.

6. Functional Integration

The bakery and prepared-foods departments are not a single, integrated unit. The bakery deals exclusively in preparing and providing baked goods for sale. Prepared-foods employees provide customers with ready-to-eat items, including salads, pizzas, and smoothies. Neither department is dependent on the other. The bakery department may occasionally provide a desert to the salad bar or make croutons for the salad bar. Although the record does not specify how often the bakery provides these products for the prepared-foods department, though there is evidence that the bakery provides these products less often than it has in the past. The bakery also does not provide the prepared-foods department with other ingredients, such as dough to make pizzas or bread to make sandwiches. Instead, the Employer provides these products for the prepared-foods department prepackaged. There is no evidence that the prepared-foods department reciprocates by providing the bakery with any ingredients or product. Furthermore, even though there is a storage area common to the bakery and prepared-foods departments, other areas of the store are either exclusive to each department or utilized by both petitioned-for and excluded departments. For example, the bakery, prepared-foods, and meat and seafood departments all use the food service freezer. Despite some minor overlap between the

department's operations, the bakery and prepared-foods departments are not significantly integrated with one another directly.

However, from a storewide view, both petitioned-for departments are functionally integrated with other departments in several ways. Not all departments have a cash register, including the bakery. In order for a customer to complete a bakery department purchase, the customer checks out through a cash register in the front end or a cash register in the prepared-foods juice bar. Similarly, a customer can check out any product from the store, regardless of department, through the prepared-foods juice-bar cash register.

Several departments are involved in cross-merchandise displays, including the bakery, produce and grocery departments. Participating departments are responsible for stocking and maintaining their product, alongside other products, in various locations throughout the store.

The prepared-foods department also directly benefits from the Employer's push/pull policy. As needed, prepared-foods employees may pull product from other departments in the store or have products pushed to it in order to make use of the product. That product could come from any department, including produce, meat and seafood, or the bakery.

All departments, including the bakery and prepared-foods departments, require pricing labels for their products. The scanning coordinator in the administrative department produces those labels. Demonstration clerks work alongside employees from other departments, including employees who prepare foods from items in the employee's department needed for the demonstration.

I find that this factor weighs heavily against the petitioned-for unit being appropriate.

7. Interchange

Bakery and prepared-foods department employees transfer to, and are cross-trained in, other departments on a regular basis. In the last year, the Employer had eight employees permanently transfer between departments, five of which transferred between petitioned-for and excluded departments. Employees also temporarily transfer between departments on a regular basis based on store need. For example, several cashiers and a bookkeeper have worked on the cash register in the prepared-foods juice bar and a couple prepared-foods clerks worked in the produce department. Over 30 employees are cross-trained to work outside of their normal department. Most of these cross-trained employees are cashiers who can work the prepared-foods juice bar. There are also bakery clerks trained as cashiers, specialty clerks who can work in prepared-foods, and produce employees who can work in the meat and seafood department. The record shows extensive employee interchange storewide, not just between the petitioned-for departments.

I find that this factor supports a conclusion that a storewide unit is the smallest appropriate unit.

8. Other Contact

Aside from the interchange described above, there is no evidence of significant contact between departmental employees, either between the petitioned-for departments, or outside of the departments. The record does not specify whether the Employer conducts employee meetings or which employees would participate. Although departments cross-merchandise with one another, only one employee testified about the contact he or she had with other employees on those occasions. Employee C. Roche described limited contact with other employees, stating

that she “might say hello to people” when she puts her product in the basket. Although the record is clear that some departments are close enough in proximity for employees in one department to talk to employees in another, there is minimal evidence that such discussions occurred. Store Manager Cantrell recalled that bakery and meat and seafood employees frequently speak with one another, but the only documented evidence was video footage of a single, isolated interaction between employees in the prepared-foods juice bar. No other witnesses testified regarding such contact.

I find that this factor neither favors nor weighs against the petitioned-for unit being appropriate.

IV. CONCLUSION

In sum, the petitioned-for unit is not appropriate, as the balance of the factors weigh against appropriateness. Based on the evidence presented at the hearing, I find that the petitioned-for employees do not share a sufficiently distinct community of interest under the Board’s traditional criteria and would constitute a fractured unit. See *Seaboard Marine*, 327 NLRB 556 (1999). Instead, the smallest appropriate unit must encompass all employees at the Employer’s store.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The petitioned-for unit is not appropriate and Petitioner has not agreed to proceed to election in another unit.

ORDER

Based on my finding that the petitioned-for unit is inappropriate for collective-bargaining purposes, the petition is dismissed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

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serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 30, 2018

A handwritten signature in black ink, reading "John D. Doyle Jr." with a stylized flourish at the end.

John D. Doyle Jr., Regional Director
Region 10
National Labor Relations Board
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